HON'BLE SHRI G.S. SINGHVI, THE CHIEF JUSTICE
AND
HON'BLE SHRI JUSTICE C.V.NAGARJUNA REDDY

WRIT PETITON NO.21244 OF 2007

Between:

Molleti Srinivasa Rao

… Petitioner

and

Sri Krishna Residency-II Owners Welfare Association Visakhapatnam

... Respondent

:: O R D E R ::

Counsel for the petitioner : Shri P. Satyanarayana

8th October, 2007

Per G. S. Singhvi, CJ

Having failed to convince the Andhra Pradesh State Consumer Disputes Redressal Commission (for short, 'the State Commission') to substantively interfere with order dated 07.06.2007 passed by District Consumer Forum-II, Visakhapatnam (for short, 'the District Forum') for appointment of the Advocate-Commissioner to inspect the building known as

Sri Krishna Residency at Visakhapatnam, the petitioner has invoked

jurisdiction of this Court under Article 226 of the Constitution of India and prayed for quashing order dated 13.08.2007 passed by the State Commission in R.P.No.114 of 2007.

The petitioner is engaged in construction business. In the year 2004, he constructed flats in the name of Sri Krishna Residency at Gollanarayanapuram, Prahladapuram, Visakhapatnam. He sold the flats to various individuals, who formed Sri Krishna Residency-II Owners Welfare Association (the respondent herein) for protection of their rights.

In the rainy season of 2005, there was huge leakage in the outer wall of the building and other portions. The respondent represented to the petitioner for rectification of the defects, but the latter did not do the needful. Therefore, the respondent filed complaint under Section 12 of the Consumer Protection Act, 1986 (for short, 'the Act') for issue of a direction to the petitioner to remedy the defects in the construction of the building. The same was registered as C.D.No.285 of 2005. In the compliant, it was alleged that the builder used sub-standard bricks made of ash with 4½" thickness and, on that account, several leaks have developed in the walls and that experts in engineering field familiar with construction works have informed the flat owners that unless periphery wall is constructed by using bricks with 6" thickness, the defects cannot be rectified.

During the pendency of the complaint, the respondent filed I.A.No.197 of 2006 for issue of a commission to examine the building and determine whether the construction was in accordance with the standards and specifications mentioned in the sale agreement. The petitioner contested the application by stating that the exercise of appointment of a Commissioner will not serve any purpose because the construction had been made as per specifications and the leakage caused due to heavy rains cannot be classified as defect in the

construction.

By an order dated 07.06.2007, the District Forum accepted the prayer of the respondent and appointed Smt. P. Chayavathi, an advocate as Commissioner and directed her to submit report after inspecting the building. The relevant portions of that order read as under:

"The petitioner before is the complainant and it is seeking for issuance of a commission to examine the building in dispute so as to know whether its construction was in accordance with the standards and specifications of construction of buildings. The respondent has resisted the application through a written counter.

The contest of the petitioner which is a Welfare association of Krishna Residency a building of apartments that the respondent building has used sub standard bricks made up to thick ash with 4 ½ inches thickness as a result of that several leaks were developed in the walls and that experts in engineering field familiar with construction works have informed them that unless the periphery walls are constructed while using bricks with 6 inches thickness, those defects in the construction cannot be rectified and that therefore it is necessary to issue a commission for examining the structure of the building so as to know whether the standards were maintained by the respondent builder while constructing the building of apartments in dispute.

Whereas the contest of the respondent as can be seen from the counter filed by him in the petition on hand is that he has used bricks with 5 inches thickness and that after plastering of walls the thickness has swollen into 6 inches and that therefore it cannot be said that there were any defects in the structure of construction of the building in dispute. The further contest of the respondent is that the petition is not maintainable since the amendment proposed by the petitioner (it appears that the respondent is under the presumption that the petitioner on hand seeking for amendment) is rendering contrary to the main relief sought for in the CD cited). At the outset, we would like to observe that the raised contentions of the respondent which he raised on the misnomer that the application is for amendment are liable to be ignored. In summing up of our discussion, we are of the considered opinion that it is a fit case whereas commission has to be issued so as to know whether the respondent builder has maintained prescribed standards in constructing the building of apartments in question and that in view of the matter, the petition deserves to be allowed of course without prejudice to the contest of the respondent in the main case.

In the result, this petition is allowed. For this purpose Smt. P. Chayavathi, a learned member of the local bar is appointed as commissioner and her fee is tentatively fixed at Rs.2,500/- (Rupees Two thousand and five hundred only) payable directly to the commissioner under a proper receipt. The Commissioner shall inspect the building in question at an early date and submit her report whether or not it has been constructed in accordance with the established standards of construction. The learned commissioner is further directed to serve notices on both sides before proceeding to execute the warrants and shall accept the work memos if any be filed by both sides and answer them properly. Entrust the warrant of commission with the learned commissioner soon after filing of a receipt in proof of payment of the commissioner's fee and call on 14.6.2007 payment of commissioner's fee."

The petitioner challenged the above reproduced order by filing revision, which was registered as R.P.No.114 of 2007. The State Commission accepted the petitioner's prayer that the Advocate-Commissioner shall take assistance of a Civil Engineer and verify the measurements as per the terms of agreement and disposed of the revision vide order dated 13.8.2007, last two paragraphs of which read as under:

"Counsel for the revision petitioner submits that the District Forum has stated that the Advocate Commissioner should verify whether the measurements of construction are according to the established standards of construction. He contends that there is no established standard construction under any law or usage of custom and sought direction to the District Forum that the Advocate Commissioner together with assistance of a Civil Engineer should verify the measurements as per the terms of agreement stated in page 7 of the Agreement. We agree with this contention and dispose of this Revision Petition with a direction to the District Forum to direct the Advocate Commissioner together with the assistance of the Civil Engineer to verify the measurements as per the terms of agreement as stated in page 7 of the agreement."

Shri P. Satyanarayana, learned counsel for the petitioner relied on agreement entered into between the petitioner and members of the respondent and submitted that the building has been constructed strictly in accordance with the specifications mentioned in Schedule A

appended thereto and there is no warrant for the appointment of Advocate-Commissioner. He argued that the State Commission did not consider the points raised in the revision and committed a serious error by confirming the order passed by the District Forum for appointment of the Advocate-Commissioner. Learned counsel then submitted that the Advocate-Commissioner cannot determine the thickness of the walls and the report, if any, which may be submitted by the Advocate-Commissioner, cannot be made basis for determining the liability of his client.

In our opinion, there is no merit in the argument of the learned counsel and the writ petition is liable to be dismissed by being treated as frivolous piece of litigation.

Section 12 of the Act lays down the manner in which the complaint is required to be made by the consumer and also provides for admission or rejection thereof. Section 13 contains the procedure to be followed by the District Forum after admission of a complaint. Sub-sections (1) and (2) of that section contain detailed procedure, which is required to be followed if the complaint relates to goods. Sub-sections (3-A) and (3-B), which were added by Act No.50 of 1993 casts a duty on the District Forum to decide the complaint within a period of three months where it does not require analysis or testing of commodities and within five months, if it requires analysis or testing of commodities and also empowers the District Forum to pass interim orders as is considered just and proper in the facts and circumstances of the case. Sub-section (4) of Section 13 vests in the District Forum the powers of a civil Court in matters relating to summoning and enforcing the attendance of any defendant or witness and examining the witness on oath, the discovery and production of any document or other material object, the reception of evidence on affidavits, the requisitioning of the report of the concerned analysis or test from the

appropriate laboratory or from other source, issue of commission to examine any witness. Sub-section (5) of Section 13 declares that every proceedings before the District Forum shall be deemed to be a judicial proceeding within the meaning of Sections 193 and 228 of the Indian Penal Code and the District Forum shall be deemed to be a civil Court for the purpose of Section 195 and Chapter XXVI of the Code of Criminal Procedure. Sub-sections (6) and (7) of Section 13 make some other provisions of the Code of Civil Procedure applicable to the complaints made under Section 12.

An analysis of the above referred provisions shows that while emphasizing the necessity of disposing of the complaints filed under Section 12 within a specified time-frame, the legislature has given wide powers to the District Forum in the matter of procedure to be followed for doing justice to both parties.

In **Indian Medical Association v. V.P. Shantha**[1], the Supreme Court considered the scheme of the Act and rejected the respondent's plea that the medical profession should be kept out of the ambit of the Act. While doing so, their Lordships also referred to Section 13 (2) and (4) of the Act and observed:

"As regards the procedure to be followed by these agencies in the matter of determination of the issues coming up for consideration it may be stated that under Section 13(2) (b), it is provided that the District Forum shall proceed to settle the consumer disputes (i) on the basis of evidence brought to its notice by the complainant and the opposite party, where the opposite party denies or disputes the allegations contained in the complaint, or (ii) on the basis of evidence brought to his notice by the complainant where the opposite party omits or fails to take any action to represent his case within the time given by the Forum. In Section 13(4) of the Act it is further provided that the District Forum shall have the same powers as are vested in the Civil Court under the Code of Civil Procedure while trying a suit in respect of the following matters :

"(i) the summoning and enforcing attendance of any defendant or witness and examining the witness on oath;

(ii) the discovery and production of any document or other material

object producible as evidence;

(iii) the reception of evidence of affidavits;

(iv) the requisitioning of the report of the concerned analysis or test from the appropriate laboratory or from any other relevant source;

(v) issuing of any commission for the examination of any witness, and

(vi) any other matter which may be prescribed."

The same provisions apply to proceedings before the State Commission and the National Commission. It has been urged that proceedings involving negligence in the matter of rendering services by a medical practitioner would raise complicated questions requiring evidence of experts to be recorded and that the procedure which is followed for determination of consumer disputes under the Act is summary in nature involving trial on the basis of affidavits and is not suitable for determination of complicated questions. It is no doubt true that sometimes complicated questions requiring recording of evidence of experts may arise in a complaint about deficiency in service based on the ground of negligence in rendering medical service by a medical practitioner; but this would not be so in all complaints about deficiency in rendering services by a medical practitioner. There may be cases which do not arise such complicated question and the deficiency in service may be due to obvious faults which can be easily established such as removal of the wrong limb or the performance of an operation on the wrong patient or giving injection of a drug to which the patient is allergic without into the out patient card containing the warring (as in **Chinkeow v. Government of Malaysia, (1967) I WLR 813 PC**) or use of wrong gas during the course of an anesthetic or leaving inside the patient swabs or other items or operating equipment after surgery. One often reads about such incidents in the newspapers. The issues arising in the complaints in such cases can be speedily disposed of by the procedure that is being followed by the Consumer Disputes Redressal Agencies and there is no reason why complaints regarding deficiency in service in such cases should not be adjudicated by the Agencies under the Act. In complaints involving complicated issues requiring recording of evidence of experts, the complainant can be asked to approach the Civil Court for appropriate relief. Section 3 of the Act which prescribes that the provisions of the Act shall be in addition to and not in derogation of the provisions of any other law for the time being in force, preserves the right of the consumer to approach the Civil Court for necessary relief. We are, therefore, unable to hold that on the ground of composition of the Consumer Disputes Redressal Agencies or on the ground of the procedure which is followed by the said Agencies for determining the issues arising before, them the service rendered by the

medical practitioners are not intended to be included in the expression `service' as defined in Section 2(1) (o) of the Act."

In **New India Assurance Co. Ltd. v. R. Srinivasan**[2], the Supreme Court held that the District Forum possesses inherent power to restore the complaint, which was dismissed in default. In **Shaheed Bhagat Singh Coop. H.B. Society Ltd. v. Improvement Trust**[3], the Supreme Court upheld the restoration of revision by the National Commission.

In **Dr.J.J. Merchant v. Shrinath Chaturvedi**[4], a three Judges Bench of the Supreme Court elaborately considered the issue relating to the procedure to be followed by the various forums constituted under the Act and observed:

"It was next contended that such complicated questions of facts cannot be decided in summary proceedings. In our view, this submission also requires to be rejected because under the Act, for summary or speedy trial, exhaustive procedure in conformity with the principles of natural justice is provided. Therefore, merely because it is mentioned that the Commission or Forum is required to have summary trial would hardly be a ground for directing the consumer to approach the civil court. For the trial to be just and reasonable, long-drawn delayed procedure, giving ample opportunity to the litigant to harass the aggrieved other side, is not necessary. It should be kept in mind that the legislature has provided alternative, efficacious, simple, inexpensive and speedy remedy to the consumers and that should not be curtailed on such ground. It would also be a totally wrong assumption that because summary trial is provided, justice cannot be done when some questions of facts are required to be dealt with or decided. The Act provides sufficient safeguards.

It is true that it is the discretion of the Commission to examine the experts if required in an appropriate matter. It is equally true that in cases where it is deemed fit to examine experts, recording of evidence before a Commission may consume time. The Act specifically empowers the Consumer Forums to follow the procedure which may not require more time or delay the proceedings. The only caution required is to follow the said procedure strictly. Under the Act, while trying a complaint, evidence could be taken on affidavits [under Section 13(4)(*iii*)]. It also empowers such Forums to issue any commission for examination of any witness [under Section 13(4)(*v*)]. It is also to be stated that Rule 4 in Order 18 CPC is substituted

which *inter alia* provides that in every case, the examination-in-chief of a witness shall be on affidavit and copies thereof shall be supplied to the opposite party by the party who calls him for evidence. It also provides that witnesses could be examined by the court or the Commissioner appointed by it. As stated above, the Commission is also empowered to follow the said procedure. Hence, we do not think that there is any scope of delay in examination or cross-examination of the witnesses. The affidavits of the experts including the doctors can be taken as evidence. Thereafter, if cross-examination is sought for by the other side and the Commission finds it proper, it can easily evolve a procedure permitting the party who intends to cross-examine by putting certain questions in writing and those questions also could be replied by such experts including doctors on affidavits. In case where stakes are very high and still a party intends to cross-examine such doctors or experts, there can be video conferences or asking questions by arranging telephonic conference and at the initial stage this cost should be borne by the person who claims such video conference. Further, cross-examination can be taken by the Commissioner appointed by it at the working place of such experts at a fixed time.

In any case, for avoiding the delay the District Forum or Commissions can evolve a procedure of levying heavy cost where adjournment is sought by a party on one or the other ground. This would have its own impact on disposing of the complaints, appeals or revisions within the stipulated or reasonable time. For avoiding delay in disposal of cases, the procedure and the time-limit prescribed under the Act and the Rules are required to be strictly adhered to and followed. If there is proper mindset to do so on the part of all concerned, delay in disposal to a large extent could be avoided."

In **CCI Chambers Coop. Hsg. Society Ltd. v. Development Credit Bank Ltd**[5], the Supreme Court referred to the earlier judgments and observed:

"It cannot be denied that fora at the national level, the State level and at the district level have been constituted under the Act with the avowed object of providing summary and speedy remedy in conformity with the principles of natural justice, taking care of such grievances as are amenable to the jurisdiction of the fora established under the Act. These fora have been established and conferred with the jurisdiction in addition to the conventional courts. The principal object sought to be achieved by establishing such fora is to relieve the conventional courts of their burden which is ever-increasing with the mounting arrears and whereat the disposal is delayed because of the complicated and detailed procedure which at times is accompanied by technicalities. Merely because recording of evidence is required, or some

questions of fact and law arise which would need to be investigated and determined, cannot be a ground for shutting the doors of any forum under the Act to the person aggrieved."

In the last mentioned judgment, the Supreme Court set aside the order of the National Commission, which had non-suited the appellant, by observing that complicated questions of fact and law are required to be investigated and the remedy available to the consumer was to file civil suit.

The ratio of the above noted judgments is that while deciding complaints made under Section 12, the District Forum is required to keep in view the object of the legislation i.e. expeditious adjudication of the consumer disputes and for this purpose, the District Forum can adopt appropriate procedure consistent with the rules of natural justice. It has got inherent power to pass appropriate orders including interlocutory orders for achieving the object of the enactment. This may include taking of evidence in the form of affidavits and giving opportunity to the other side to cross-examine the deponent. It can also take the opinion of the expert and rely on the same after giving opportunity of hearing to the parties. If the complaint relates to goods, then the procedure prescribed under sub-sections (1) and (2) of Section 13 is required to be followed. It can also resort to the provisions of the Code of Civil Procedure specified in sub-sections (4), (6) and (7).

We may now advert to the case in hand. A combined reading of the orders passed by District Forum and State Commission makes it clear that the same do not affect any legal right of the petitioner or cause any prejudice to him. The appointment of the Advocate-Commissioner and inspection of the building by her with the assistance of Civil Engineer will only facilitate comprehensive adjudication of the issue raised in the complaint filed by the respondent. The petitioner can file objections against the report of the

Advocate-Commissioner and also lead evidence in support of his claim. Therefore, there is no justification for this Court's interdiction in the discretionary order passed by the District Forum which, as mentioned above, has been confirmed by the State Commission with the modification that the Advocate-Commissioner shall take assistance of a Civil Engineer.

In the result, the writ petition is dismissed. For filing a frivolous petition like the present one, the petitioner is saddled with cost of Rs.10,000/-. He shall deposit the amount of cost with the Andhra Pradesh State Legal Services Authority within one month from today. The Member Secretary, Andhra Pradesh State Legal Services Authority should inform the Court whether or not the petitioner has deposited the amount of cost so that if it becomes necessary, direction may be issued for recovery thereof as arrears of land revenue.

G.S. SINGHVI, CJ

Date: 08-10-2007

C.V. NAGARJUNA REDDY, J

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[1] (1995) 6 SCC 651
[2] (2000) 3 SCC 242
[3] (2000) 9 SCC 361
[4] (2002) 6 SCC 635
[5] (2003) 7 SCC 233